

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

UNITED STATES OF AMERICA,

v.

**Criminal Action No. 3:21-CR-49
(GROH)**

**JONATHAN TOEBBE and
DIANA TOEBBE,**

Defendants.

**UNITED STATES' UNOPPOSED MOTION FOR PROTECTIVE ORDER
REGARDING UNCLASSIFIED DISCOVERY**

Now comes the United States of America and William J. Ihlenfeld, II, United States Attorney for the Northern District of West Virginia, by Jarod J. Douglas, Assistant United States Attorney for said District, Jessica Lieber Smolar, Special Assistant United States Attorney for said District, and S. Derek Shugert and Matthew J. McKenzie, Trial Attorneys, U.S. Department of Justice, National Security Division, and pursuant to Rule 16(d)(1) of the Federal Rules of Criminal Procedure and Rule 16.09 of the Local Rules of Criminal Procedure, move the Court to enter a protective order restricting access of the unclassified discovery to counsel for the defendants. The following is stated in support of this motion.

1. Many of the unclassified discovery documents contain sensitive and personal identifying information about various individuals. Because these discovery documents are voluminous, the expense of time and other resources to redact such information is not a guarantee that such information will not remain due to human error, or otherwise. Accordingly, the United States has legitimate concerns about releasing sensitive personal information without adequate protections in place.

2. In addition, multiple video recordings in the unclassified discovery capture innocent bystanders in the frame at public locations. The protections in the proposed Protective Order will be more adequate than attempting to blue the images of the innocent bystanders, the latter of which involve potential human error.

3. The undersigned has discussed these concerns with counsel for the defendants. As a result of these discussions, the defendants and the undersigned have agreed to propose the attached protective order to govern the disclosure and handling of the unclassified discovery. See Exhibit No. 1, Proposed Protective Order.

WHEREFORE, the United States requests that the Court enter the attached protective order.

Respectfully submitted,

WILLIAM J. IHLENFELD, II
UNITED STATES ATTORNEY

By: /s/
Jarod J. Douglas, Assistant United States Attorney
Jessica Lieber Smolar, Special Assistant United States Attorney
United States Attorney's Office for the
Northern District of West Virginia
1125 Chapline Street, Suite 3000
Wheeling, WV 26003

/s/
S. Derek Shugert and Matthew J. McKenzie
Trial Attorneys
Counterintelligence and Export Control Section
National Security Division
United States Department of Justice

CERTIFICATE OF SERVICE

I, Jarod J. Douglas, Assistant United States Attorney for the Northern District of West Virginia, hereby certify that on the 27th day of October 2021, the foregoing UNITED STATES' UNOPPOSED MOTION FOR PROTECTIVE ORDER, including Exhibit No. 1, was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Nicholas J. Compton, Esq.
Assistant Federal Public Defender
MVB Bank Building
651 Foxcroft Avenue, Ste. 202
Martinsburg, WV 25401
Counsel for Defendant Jonathan Toebbe

Edward B. MacMahon, Jr., Esq.
107 E. Washington Street
Middleburg, VA 20117
Counsel for Defendant Diana Toebbe

Barry P. Beck, Esq.
Power, Beck & Matzuff
308 W. Burke Street
Martinsburg, WV 25401
Counsel for Defendant Diana Toebbe

WILLIAM J. IHLENFELD, II
UNITED STATES ATTORNEY

By: /s/ Jarod J. Douglas
Jarod J. Douglas
Assistant United State Attorney